

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>LARRY FITZPATRICK,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 2:07-cv-528-WHA</b>
	)	
<b>CITY OF MONTGOMERY,</b>	)	<b>December 5, 2007</b>
<b>Defendant.</b>	)	

**PLAINTIFF'S RESPONSE TO DEFENDANT'S  
MOTION TO WITHDRAW ADMISSIONS**

COMES NOW the Plaintiff, Larry Fitzpatrick, (hereinafter Mr. Fitzpatrick) and pursuant to this Court's Order, dated November 29, 2007, responds to Defendant's Motion to Withdraw Admissions as follows:

1. Mr. Fitzpatrick, by and through his undersigned counsel, served his Request for Admissions, along with Interrogatories and Request for Production of Documents and Things, on Defendant or about October 4, 2007.

2. According to Rule 36(a), Federal Rules of Civil Procedure, responses to Requests for Admissions are due 30 days from the date of receipt, unless a longer time is agreed upon by the parties or unless the court approves a longer time to provide said responses. Rule 36(a) also provides that, unless Responses are provided within 30 days or longer by agreement or court approval, said Admissions are deemed admitted.

3. Defendants admit they did not Respond to Plaintiff's Requests for Admissions within the 30 days provided in Rule 36(a). No attempt was made, prior to the expiration of the 30 days, to extend the time limit, either by agreement with Mr. Fitzpatrick's counsel or by approval of this Court.

4. The items that would be admitted by operation of Rule 36(a) would provide evidence of pretext in the City's reasons for terminating Mr. Fitzpatrick, but they would not be dispositive of the issues in this case.

5. Mr. Fitzpatrick would be prejudiced if the Defendant's Motion is granted because additional discovery will be necessary to prove pretext, which may not be needed if these items were admitted by operation of Rule 36(a).

The foregoing considered, Mr. Fitzpatrick respectfully requests that this court deny Defendant's Motion to Withdraw Admissions.

RESPECTFULLY SUBMITTED, this the 5<sup>th</sup> day of December, 2007.

/s/Joseph C. Guillot  
Joseph C. Guillot (GUI011)  
Attorney for Mr. Fitzpatrick

Of Counsel:  
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#### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court and this will send notification of such filing to the following:

Michael D. Boyle Esq.  
Wallace Mills, Esq.

This the 5<sup>th</sup> day of December, 2007.

/s/Joseph C. Guillot  
Of Counsel